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RICHARD W. FRIEDMAN
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LB

HEWLETT-PACKARD COMPANY,
A Delaware corporation,

Plaintiff,

v.

INNOVATIO IP VENTURES, LLC,

Defendant.

Case No.

CV 12 1076

COMPLAINT AND DEMAND FOR JURY
TRIAL

COMPLAINT AND JURY DEMAND

Plaintiff Hewlett-Packard Company ("HP") for its complaint against Defendant Innovatio IP Ventures, LLC ("Innovatio") alleges:

I. THE PARTIES

1. HP is a corporation organized and existing under the laws of the state of Delaware. HP's principal place of business is 3000 Hanover Street, Palo Alto, California 94304.

2. Upon information and belief, Defendant Innovatio IP Ventures, LLC ("Innovatio") is a limited liability company organized and existing under the laws of the state of Delaware, and has a principal place of business at 22 West Washington Street, Suite 1500, Chicago, Illinois 60602.

II. JURISDICTION

3. This action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, the patent laws of the United States, 35 U.S.C. § 1 *et seq.* An actual, substantial and

1 continuing justiciable controversy exists between HP and Innovatio that requires a declaration of
2 rights by this Court.

3 4. The Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
4 1338(a), and 2201-2202.

5 5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

6 6. The Court has personal jurisdiction over Innovatio by virtue of Innovatio's
7 purposeful and repeated contacts in this District, including, *inter alia*, Innovatio's attempts to
8 enforce U.S. Patent Nos. 6,714,559, 7,386,002, 7,535,921, 7,548,553, 5,740,366, 5,940,771,
9 6,374,311, 7,457,646, 5,546,397, 5,844,893, 6,665,536, 6,697,415, 7,013,138, 7,710,907,
10 7,916,747, 7,873,343, and 7,536,167 ("the Patents-in-Suit") against products manufactured by HP
11 and other companies with principal places of business in this District.

12 **III. THE PATENTS-IN-SUIT**

13 7. U.S. Patent No. 6,714,559 ("the '559 patent") is entitled "Redundant Radio
14 Frequency Network Having a Roaming Terminal Communication Protocol" and issued on March
15 30, 2004. A copy of the '559 patent is attached hereto as Exhibit 1.

16 8. U.S. Patent No. 7,386,002 ("the '002 patent") is entitled "Redundant Radio
17 Frequency Network Having a Roaming Terminal Communication Protocol" and issued on June
18 10, 2008. A copy of the '002 patent is attached hereto as Exhibit 2.

19 9. U.S. Patent No. 7,535,921 ("the '921 patent") is entitled "Redundant Radio
20 Frequency Network Having a Roaming Terminal Communication Protocol" and issued on May
21 19, 2009. A copy of the '921 patent is attached hereto as Exhibit 3.

22 10. U.S. Patent No. 7,548,553 ("the '553 patent") is entitled "Redundant Radio
23 Frequency Network Having a Roaming Terminal Communication Protocol" and issued on June
24 16, 2009. A copy of the '553 patent is attached hereto as Exhibit 4.

25 11. U.S. Patent No. 5,740,366 ("the '366 patent") is entitled "Communication Network
26 Having a Plurality of Bridging Nodes Which Transmit a Beacon to Terminal Nodes in Power
27 Saving State That It Has Messages Awaiting Delivery" and issued on April 14, 1998. A copy of
28 the '366 patent is attached hereto as Exhibit 5.

1 12. U.S. Patent No. 5,940,771 (“the ’771 patent”) is entitled “Network Supporting
2 Roaming, Sleeping Terminals” and issued on August 17, 1999. A copy of the ’771 patent is
3 attached hereto as Exhibit 6.

4 13. U.S. Patent No. 6,374,311 (“the ’311 patent”) is entitled “Communication Network
5 Having a Plurality of Bridging Nodes Which Transmit a Beacon to Terminal Nodes in Power
6 Saving State That It Has Messages Awaiting Delivery” and issued on April 16, 2002. A copy of
7 the ’311 patent is attached hereto as Exhibit 7.

8 14. U.S. Patent No. 7,457,646 (“the ’646 patent”) is entitled “Radio Frequency Local
9 Area Network” and issued on November 25, 2008. A copy of the ’646 patent is attached hereto as
10 Exhibit 8.

11 15. U.S. Patent No. 5,546,397 (“the ’397 patent”) is entitled “High Reliability Access
12 Point for Wireless Local Area Network” and issued on August 13, 1996. A copy of the ’397
13 patent is attached hereto as Exhibit 9.

14 16. U.S. Patent No. 5,844,893 (“the ’893 patent”) is entitled “System for Coupling
15 Host Computer Means with Base Transceiver Units on a Local Area Network” and issued on
16 December 1, 1998. A copy of the ’893 patent is attached hereto as Exhibit 10.

17 17. U.S. Patent No. 6,665,536 (“the ’536 patent”) is entitled “Local Area Network
18 Having Multiple Channel Wireless Access” and issued on December 16, 2003. A copy of the
19 ’536 patent is attached hereto as Exhibit 11.

20 18. U.S. Patent No. 6,697,415 (“the ’415 patent”) is entitled “Spread Spectrum
21 Transceiver Module Utilizing Multiple Mode Transmission” and issued on February 24, 2004. A
22 copy of the ’415 patent is attached hereto as Exhibit 12.

23 19. U.S. Patent No. 7,013,138 (“the ’138 patent”) is entitled “Local Area Network
24 Having Multiple Channel Wireless Access” and issued on March 14, 2006. A copy of the ’138
25 patent is attached hereto as Exhibit 13.

26 20. U.S. Patent No. 7,710,907 (“the ’907 patent”) is entitled “Local Area Network
27 Having Multiple Channel Wireless Access” and issued on May 4, 2010. A copy of the ’907 patent
28 is attached hereto as Exhibit 14.

1 21. U.S. Patent No. 7,916,747 (“the ’747 patent”) is entitled “Redundant Radio
2 Frequency Network Having a Roaming Terminal Communication Protocol” and issued on March
3 29, 2011. A copy of the ’747 patent is attached hereto as Exhibit 15.

4 22. U.S. Patent No. 7,873,343 (“the ’343 patent”) is entitled “Communication Network
5 Terminal with Sleep Capability” and issued on January 18, 2011. A copy of the ’343 patent is
6 attached hereto as Exhibit 16.

7 23. U.S. Patent No. 7,536,167 (“the ’167 patent”) is entitled “Network Supporting
8 Roaming, Sleeping Terminals” and issued on May 19, 2009. A copy of the ’167 patent is attached
9 hereto as Exhibit 17.

10 **IV. FACTUAL BACKGROUND**

11 24. On March 8, 2011, Innovatio sued ABP Corporation, Accor North America,
12 Caribou Coffee Co., Inc., CBC Restaurant Corp., Cosi, Inc., Dominick’s Supermarkets, Inc.,
13 Kimpton Hotel & Restaurant Group, LLC, LQ Management LLC, Meijer, Inc., and Panera Bread
14 Company for patent infringement of fourteen of the Patents-in-Suit in the Northern District of
15 Illinois, Civil Action No. 11-cv-1638 (the “ABP action”). Innovatio filed a first amended
16 complaint on April 6, 2011 and asserted three additional U.S. patents of the Patents-in-Suit.
17 Innovatio accused the defendants of infringing the Patents-in-Suit by “using WLAN [wireless
18 local area network] products” and/or “WLANs.” Several of the defendants use wireless access
19 points manufactured by HP and sought indemnification from HP.

20 25. Innovatio has since filed suits asserting the Patents-in-Suit in districts around the
21 country, including additional suits in the Northern District of Illinois, Western District for
22 Wisconsin, Middle District of Florida, and the District of Nevada. Several of the defendants in
23 certain of these cases defendants use wireless access points manufactured and sold by HP and
24 sought indemnification from HP.

25 26. Innovatio has sent letters to other HP customers (“Accused HP Customers”) in
26 which it asserted that the Patents-in-Suit were infringed by the HP customers’ use of HP wireless
27 access points in wireless local area networks. For example, Innovatio alleged in these letters that
28 the Patents-in-Suit have “broad application in the field of wireless local area network (‘WLAN’)

1 technology (popularly referred to as 'Wi-Fi'), including the emerging field of 'mesh' networking."
2 Moreover, Innovatio alleged in the letters to HP's customers that "WLANs deployed in any
3 corporate office, manufacturing, distribution, retail, inventory management, warehousing,
4 industrial monitoring and control, or 'smart energy' environments" "infringes numerous of the
5 Innovatio patents." Innovatio further asserted that "[c]laims of the Innovatio Patents cover, among
6 other things, WLANs that use the IEEE 802.11 communication protocols." These Accused HP
7 Customers have sought indemnification from HP.

8 27. Innovatio identified wireless access points manufactured and sold by HP as
9 Accused Instrumentalities in its infringement contentions in the ABP action. HP manufactures
10 and sells wireless access points that are the subject of the ABP and other pending actions, as well
11 as being accused in the letters to Accused HP Customers.

12 28. On information and belief, accused HP products include devices that are licensed to
13 the Patents-in-Suit.

14 29. On information and belief, Broadcom Corporation ("Broadcom") is licensed to
15 make, have made, use, sell, offer for sale, and import products covered by the Patents-in-Suit. To
16 the extent that Innovatio's allegations of patent infringement are predicated on the alleged making,
17 use, sale, offer for sale, or importation of HP products that incorporate Broadcom products, such
18 allegations are barred pursuant to such license and/or the doctrine of patent exhaustion.

19 30. On information and belief, Broadcom granted a license to Qualcomm Incorporated
20 ("Qualcomm") to make, have made, use, sell, offer for sale, and import products covered by the
21 Patents-in-Suit. To the extent that Innovatio's allegations of patent infringement are predicated on
22 the alleged making, use, sale, offer for sale, or importation of HP products that incorporate
23 Qualcomm or Qualcomm Atheros Inc. products, such allegations are barred pursuant to such
24 license and/or the doctrine of patent exhaustion.

25 31. On information and belief, Broadcom granted a license to Agere Systems Inc.
26 ("Agere") to make, have made, use, sell, offer for sale, and import products covered by the
27 Patents-in-Suit. To the extent that Innovatio's allegations of patent infringement are predicated on
28 the alleged making, use, sale, offer for sale, or importation of HP products that incorporate Agere

1 products, such allegations are barred pursuant to such license and/or the doctrine of patent
2 exhaustion.

3 32. On information and belief, Broadcom granted a license to STMicroelectronics to
4 make, have made, use, sell, offer for sale, and import products covered by the Patents-in-Suit. To
5 the extent that Innovatio's allegations of patent infringement are predicated on the alleged making,
6 use, sale, offer for sale, or importation of HP products that incorporate STMicroelectronics
7 products, such allegations are barred pursuant to such license and/or the doctrine of patent
8 exhaustion.

9 33. On information and belief, at least some of the HP products accused of patent
10 infringement by Innovatio are licensed to the Patents-in-Suit.

11 34. HP, its wireless access point products, and HP's customers have not infringed, and
12 do not infringe, directly or indirectly, any valid and enforceable claim of any of the Patents-in-
13 Suit, either literally or under the doctrine of equivalents. There exists an actual and justiciable
14 controversy between HP and Innovatio that warrants declaratory relief.

15 **COUNT I**

16 **NONINFRINGEMENT OF U.S. PATENT 6,714,559**

17 35. HP incorporates by reference the allegations in paragraphs 1 through 34, inclusive.

18 36. This is an action for declaratory judgment of noninfringement of any and all valid
19 claims of the '559 patent.

20 37. HP has an objectively reasonable apprehension that Innovatio will bring a patent
21 infringement action against HP and/or HP's customers.

22 38. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has
23 standing to sue for infringement of" the '559 patent, "including the right to sue for and collect past
24 damages."

25 39. Innovatio has alleged and continues to allege that HP's customers have directly
26 infringed the '559 patent.

40. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '559 patent.

41. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '559 are infringed by HP or HP's customers.

42. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '559 patent.

COUNT II

INVALIDITY OF U.S. PATENT NO. 6,714,559

43. HP incorporates by reference the allegations of paragraphs 1 through 42, inclusive.

44. This is an action for declaratory judgment of invalidity of any and all claims of the '559 patent.

45. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

46. The claims of the '559 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

47. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '559 are invalid.

48. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '559 patent.

COUNT III

NONINFRINGEMENT OF U.S. PATENT 7,386,002

49. HP incorporates by reference the allegations in paragraphs 1 through 48, inclusive.

50. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '002 patent.

51. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

52. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’002 patent, “including the right to sue for and collect past damages.”

53. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '002 patent.

54. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '002 patent.

55. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '002 are infringed by HP or HP's customers.

56. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '002 patent.

COUNT IV

INVALIDITY OF U.S. PATENT NO. 7,386,002

57. HP incorporates by reference the allegations of paragraphs 1 through 56, inclusive.

58. This is an action for declaratory judgment of invalidity of any and all claims of the '002 patent.

59. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

60. The claims of the '002 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

61. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '002 are invalid.

62. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '002 patent.

COUNT V

NONINFRINGEMENT OF U.S. PATENT 7,535,921

63. HP incorporates by reference the allegations in paragraphs 1 through 62, inclusive.

64. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '921 patent.

65. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

66. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’921 patent, “including the right to sue for and collect past damages.”

67. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '921 patent.

68. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '921 patent.

69. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '921 are infringed by HP or HP's customers.

70. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '921 patent.

COUNT VI

INVALIDITY OF U.S. PATENT NO. 7,535,921

71. HP incorporates by reference the allegations of paragraphs 1 through 70, inclusive.

72. This is an action for declaratory judgment of invalidity of any and all claims of the '921 patent.

73. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

74. The claims of the '921 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

75. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '921 are invalid.

76. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '921 patent.

COUNT VII

NONINFRINGEMENT OF U.S. PATENT 7,548,553

77. HP incorporates by reference the allegations in paragraphs 1 through 76, inclusive.

78. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '553 patent.

79. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

80. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has standing to sue for infringement of" the '553 patent, "including the right to sue for and collect past damages."

81. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '553 patent.

82. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '553 patent.

83. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '553 are infringed by HP or HP's customers.

84. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '553 patent.

COUNT VIII

INVALIDITY OF U.S. PATENT NO. 7,548,553

85. HP incorporates by reference the allegations of paragraphs 1 through 84, inclusive.

86. This is an action for declaratory judgment of invalidity of any and all claims of the '553 patent.

87. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

88. The claims of the '553 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

89. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '553 are invalid.

90. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '553 patent.

COUNT IX

NONINFRINGEMENT OF U.S. PATENT 5,740,366

91. HP incorporates by reference the allegations in paragraphs 1 through 90, inclusive.

92. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '366 patent.

93. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

94. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’366 patent, “including the right to sue for and collect past damages.”

95. Innovatio has alleged and continues to allege that HP's customers have directly infringed, and induced and/or contributed to the infringement of the '366 patent.

96. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '366 patent.

97. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '366 are infringed by HP or HP's customers.

98. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '366 patent.

COUNT X

INVALIDITY OF U.S. PATENT NO. 5,740,366

99. HP incorporates by reference the allegations of paragraphs 1 through 98, inclusive.

100. This is an action for declaratory judgment of invalidity of any and all claims of the '366 patent.

101. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

102. The claims of the '366 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

103. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '366 are invalid.

104. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '366 patent.

COUNT XI

NONINFRINGEMENT OF U.S. PATENT 5,940,771

105. HP incorporates by reference the allegations in paragraphs 1 through 104, inclusive.

106. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '771 patent.

107. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

108. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’771 patent, “including the right to sue for and collect past damages.”

109. Innovatio has alleged and continues to allege that HP's customers have directly infringed, and induced and/or contributed to the infringement of the '771 patent.

110. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '771 patent.

111. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '771 are infringed by HP or HP's customers.

112. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '771 patent.

COUNT XII

INVALIDITY OF U.S. PATENT NO. 5,940,771

113. HP incorporates by reference the allegations of paragraphs 1 through 112, inclusive.

114. This is an action for declaratory judgment of invalidity of any and all claims of the '771 patent.

115. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

116. The claims of the '771 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

117. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '771 are invalid.

118. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '771 patent.

COUNT XIII

NONINFRINGEMENT OF U.S. PATENT 6,374,311

119. HP incorporates by reference the allegations in paragraphs 1 through 118, inclusive.

120. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '311 patent.

121. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

122. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has standing to sue for infringement of" the '311 patent, "including the right to sue for and collect past damages."

123. Innovatio has alleged and continues to allege that HP's customers have directly infringed, and induced and/or contributed to the infringement of the '311 patent.

124. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '311 patent.

125. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '311 are infringed by HP or HP's customers.

126. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '311 patent.

COUNT XIV

INVALIDITY OF U.S. PATENT NO. 6,374,311

127. HP incorporates by reference the allegations of paragraphs 1 through 126, inclusive.

128. This is an action for declaratory judgment of invalidity of any and all claims of the '311 patent.

129. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

130. The claims of the '311 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

131. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '311 are invalid.

132. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '311 patent.

COUNT XV

NONINFRINGEMENT OF U.S. PATENT 7,457,646

133. HP incorporates by reference the allegations in paragraphs 1 through 132, inclusive.

134. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '646 patent.

135. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

136. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has standing to sue for infringement of" the '646 patent, "including the right to sue for and collect past damages."

137. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '646 patent.

138. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '646 patent.

139. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '646 are infringed by HP or HP's customers.

140. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '646 patent.

COUNT XVI

INVALIDITY OF U.S. PATENT NO. 7,457,646

141. HP incorporates by reference the allegations of paragraphs 1 through 140, inclusive.

142. This is an action for declaratory judgment of invalidity of any and all claims of the '646 patent.

143. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

144. The claims of the '646 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

145. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '646 are invalid.

146. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '646 patent.

COUNT XVII

NONINFRINGEMENT OF U.S. PATENT 5,546,397

147. HP incorporates by reference the allegations in paragraphs 1 through 146, inclusive.

148. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '397 patent.

149. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

150. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’397 patent, “including the right to sue for and collect past damages.”

151. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '397 patent.

152. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '397 patent.

153. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '397 are infringed by HP or HP's customers.

154. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '397 patent.

COUNT XVIII

INVALIDITY OF U.S. PATENT NO. 5,546,397

155. HP incorporates by reference the allegations of paragraphs 1 through 154, inclusive.

156. This is an action for declaratory judgment of invalidity of any and all claims of the '397 patent.

157. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

158. The claims of the '397 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

159. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '397 are invalid.

160. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '397 patent.

COUNT XIX

NONINFRINGEMENT OF U.S. PATENT 5,844,893

161. HP incorporates by reference the allegations in paragraphs 1 through 160, inclusive.

162. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '893 patent.

163. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

164. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’893 patent, “including the right to sue for and collect past damages.”

165. Innovatio has alleged and continues to allege that HP's customers have directly infringed, and induced and/or contributed to the infringement of the '893 patent.

166. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '893 patent.

167. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '893 are infringed by HP or HP's customers.

168. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '893 patent.

COUNT XX

INVALIDITY OF U.S. PATENT NO. 5,844,893

169. HP incorporates by reference the allegations of paragraphs 1 through 168, inclusive.

170. This is an action for declaratory judgment of invalidity of any and all claims of the '893 patent.

171. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

172. The claims of the '893 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

173. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '893 are invalid.

174. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '893 patent.

COUNT XXI

NONINFRINGEMENT OF U.S. PATENT 6,665,536

175. HP incorporates by reference the allegations in paragraphs 1 through 174, inclusive.

176. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '536 patent.

177. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

178. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’536 patent, “including the right to sue for and collect past damages.”

179. Innovatio has alleged and continues to allege that HP's customers have directly infringed, and induced and/or contributed to the infringement of the '536 patent.

180. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '536 patent.

181. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '536 are infringed by HP or HP's customers.

1 182. HP desires and requests a judicial determination and declaration of the respective
2 rights and duties of the parties based on the disputes recited herein. Such a determination and
3 declaration is necessary and appropriate at this time so that the parties may ascertain their
4 respective rights and responsibilities regarding noninfringement of the '536 patent.

5 **COUNT XXII**

6 **INVALIDITY OF U.S. PATENT NO. 6,665,536**

7 183. HP incorporates by reference the allegations of paragraphs 1 through 182,
8 inclusive.

9 184. This is an action for declaratory judgment of invalidity of any and all claims of the
10 '536 patent.

11 185. HP has an objectively reasonable apprehension that Innovatio will bring a patent
12 infringement action against HP and/or HP's customers.

13 186. The claims of the '536 patent are invalid because they fail to comply with the
14 conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not
15 limited to 35 U.S.C. §§ 101, 102, 103, and 112.

16 187. Accordingly, there exists an actual and justiciable controversy between HP and
17 Innovatio relating to whether the claims of the '536 are invalid.

18 188. HP desires and requests a judicial determination and declaration of the respective
19 rights and duties of the parties based on the disputes recited herein. Such a determination and
20 declaration is necessary and appropriate at this time so that the parties may ascertain their
21 respective rights and responsibilities regarding the invalidity of the '536 patent.

22 **COUNT XXIII**

23 **NONINFRINGEMENT OF U.S. PATENT 6,697,415**

24 189. HP incorporates by reference the allegations in paragraphs 1 through 188,
25 inclusive.

26 190. This is an action for declaratory judgment of noninfringement of any and all valid
27 claims of the '415 patent.

COUNT XXVI

INVALIDITY OF U.S. PATENT NO. 7,013,138

211. HP incorporates by reference the allegations of paragraphs 1 through 210, inclusive.

212. This is an action for declaratory judgment of invalidity of any and all claims of the '138 patent.

213. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

214. The claims of the '138 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

215. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '138 are invalid.

216. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '138 patent.

COUNT XXVII

NONINFRINGEMENT OF U.S. PATENT 7,710,907

217. HP incorporates by reference the allegations in paragraphs 1 through 216, inclusive.

218. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '907 patent.

219. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

220. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has standing to sue for infringement of" the '907 patent, "including the right to sue for and collect past damages."

1 221. Innovatio has alleged and continues to allege that HP's customers have directly
2 infringed the '907 patent.

3 222. HP denies Innovatio's allegations with respect to infringement by HP's customers.
4 Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents,
5 or induce or contribute to the infringement of, any valid claim of the '907 patent.

6 223. Accordingly, there exists an actual and justiciable controversy between HP and
7 Innovatio relating to whether the claims of the '907 are infringed by HP or HP's customers.

8 224. HP desires and requests a judicial determination and declaration of the respective
9 rights and duties of the parties based on the disputes recited herein. Such a determination and
10 declaration is necessary and appropriate at this time so that the parties may ascertain their
11 respective rights and responsibilities regarding noninfringement of the '907 patent.

12 **COUNT XXVIII**

13 **INVALIDITY OF U.S. PATENT NO. 7,710,907**

14 225. HP incorporates by reference the allegations of paragraphs 1 through 224,
15 inclusive.

16 226. This is an action for declaratory judgment of invalidity of any and all claims of the
17 '907 patent.

18 227. HP has an objectively reasonable apprehension that Innovatio will bring a patent
19 infringement action against HP and/or HP's customers.

20 228. The claims of the '907 patent are invalid because they fail to comply with the
21 conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not
22 limited to 35 U.S.C. §§ 101, 102, 103, and 112.

23 229. Accordingly, there exists an actual and justiciable controversy between HP and
24 Innovatio relating to whether the claims of the '907 are invalid.

25 230. HP desires and requests a judicial determination and declaration of the respective
26 rights and duties of the parties based on the disputes recited herein. Such a determination and
27 declaration is necessary and appropriate at this time so that the parties may ascertain their
28 respective rights and responsibilities regarding the invalidity of the '907 patent.

COUNT XXIX

NONINFRINGEMENT OF U.S. PATENT 7,916,747

231. HP incorporates by reference the allegations in paragraphs 1 through 230, inclusive.

232. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '747 patent.

233. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

234. Innovatio has alleged that it "owns all rights, title, and interest in and to, and has standing to sue for infringement of" the '747 patent, "including the right to sue for and collect past damages."

235. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '747 patent.

236. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '747 patent.

237. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '747 are infringed by HP or HP's customers.

238. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '747 patent.

COUNT XXX

INVALIDITY OF U.S. PATENT NO. 7,916,747

239. HP incorporates by reference the allegations of paragraphs 1 through 238, inclusive.

240. This is an action for declaratory judgment of invalidity of any and all claims of the '747 patent.

241. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

242. The claims of the '747 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

243. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '747 are invalid.

244. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '747 patent.

COUNT XXXI

NONINFRINGEMENT OF U.S. PATENT 7,873,343

245. HP incorporates by reference the allegations in paragraphs 1 through 244, inclusive.

246. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '343 patent.

247. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

248. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’343 patent, “including the right to sue for and collect past damages.”

249. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '343 patent.

250. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '343 patent.

260. This is an action for declaratory judgment of noninfringement of any and all valid claims of the '167 patent.

261. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

262. Innovatio has alleged that it “owns all rights, title, and interest in and to, and has standing to sue for infringement of” the ’167 patent, “including the right to sue for and collect past damages.”

263. Innovatio has alleged and continues to allege that HP's customers have directly infringed the '167 patent.

264. HP denies Innovatio's allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '167 patent.

265. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the '167 are infringed by HP or HP's customers.

266. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding noninfringement of the '167 patent.

COUNT XXXIV

INVALIDITY OF U.S. PATENT NO. 7,386,167

267. HP incorporates by reference the allegations of paragraphs 1 through 266, inclusive.

268. This is an action for declaratory judgment of invalidity of any and all claims of the '167 patent.

269. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

COUNT XXXVI

PATENT EXHAUSTION

278. HP incorporates by reference the allegations of paragraphs 1 through 277, inclusive.

279. This is an action for declaratory judgment that to the extent that any of Innovatio's allegations of patent infringement are predicated on the alleged making, use, sale, offer for sale, or importation of licensed products by HP or HP's customers, such allegations are barred pursuant to the doctrine of patent exhaustion.

280. HP has an objectively reasonable apprehension that Innovatio will bring a patent infringement action against HP and/or HP's customers.

281. Accordingly, there exists an actual and justiciable controversy between HP and Innovatio relating to whether the claims of the Patents-in-Suit are exhausted.

282. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding whether the claims of the Patents-in-Suit are exhausted.

PRAYER FOR RELIEF

WHEREFORE, HP prays for the following relief:

A. A declaration that HP and its customers have not infringed and do not infringe in any manner any valid and enforceable claim of any of the Patents-in-Suit;

B. A declaration that each claim of the Patents-in-Suit is invalid;

C. A declaration that Innovatio's allegations are barred by license and/or patent exhaustion;

D. A permanent injunction prohibiting further or future enforcement of the Patents-in-Suit against HP, its suppliers, manufacturers, distributors, resellers, customers, or end-users of its products;

1 E. A judgment deeming this to be an "exceptional" case with the meaning of 35
2 U.S.C. § 285, entitling HP to an award of its reasonable attorneys' fees, expenses, and costs in this
3 action; and

4 F. For such other and further relief, in law or in equity, as this Court deems just.

5 **JURY TRIAL DEMANDED**

6 HP demands a trial by jury as to all issues and causes of action so triable herein, pursuant
7 to Federal Rule of Civil Procedure 38 and Local Rule 3-6(a).

8 Dated: March 2, 2012

BRACEWELL & GIULIANI LLP

9
10 By: 

11 Barry K. Shelton

12 Attorneys for Plaintiff
13 HEWLETT-PACKARD COMPANY
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